

REMARKS

Response to the Election/Restriction Requirements

In the July 12, 2007 Office Action, the Examiner accepted Applicants' election of the species and withdrew claims 8-9 and 15-24 from consideration, asserting that these claims are directed to non-elected species.

However, upon reviewing the instant specification of the present application, Applicants realized that **the withdrawn claims 15-24 are in fact all directed toward elected species**. Specifically, Applicants have elected glass bead (or sphere, which is a term used interchangeably with the term "bead" throughout the instant specification of the present application) in the April 24, 2007 Response to Restriction Requirement. The instant specification at page 3, lines 16-34 and page 4, lines 1-2 describes various different types of glass spheres or beads, including both hollow and solid glass spheres or beads that can be used as the transparent component in the present invention. Claims 15 and 19-21 are directed to compositions comprising a solid glass sphere, which is one type of glass beads or spheres as elected by Applicants in the April 24, 2007 Response. Claims 16-18 and 22-24 are directed to compositions comprising a hollow glass sphere, which is another type of glass beads or spheres as elected by Applicants in the April 24, 2007 Response.

Accordingly, Applicants request the Examiner to consolidate claims 15-24 with claims 1-7 and 10-14 for consideration in future examination.

Response to the §103 Rejections

In the July 12, 2007 Office Action, the Examiner rejected claims 1-7 and 10-14 under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 5,830,485 (hereinafter "the '485

Patent”) in view of European Patent Application Publication No. 1013724 (hereinafter “the ‘724 Publication”).

In response, Applicants have hereby amended claims 1 and 11, from which claims 2-7, 10, and 12-14 respectively depend, to positively recite “a simple combination” of the transparent component of a specific light transmission value (e.g., glass bead or microsphere) and the non-interference platelet component of specific light transmission and reflectance values (e.g., alumina flakes). Support for such claim amendment can be readily found in the instant specification of the present application as originally filed on page 5, lines 1-2 and page 3, lines 14-15.

It is important to note that the transparent component and the non-interference platelet component are simply combined together in the claimed composition of the present application, so that the transmissive and reflective properties of such essential components can interplay with each other to achieve a desirable “silvering” or variable mirror effect, i.e., the clear skin areas provide enough light to shine through the makeup “mirror,” while the blemished skin, being darker, causes the “mirror” to become more opaque for effectively concealing of the blemishes without altering the appearance of the unflawed skin (see instant specification, page 4, lines 31-32 and page 5, lines 1-7). Examples 2-6 of the present application clearly describes cosmetic compositions containing a simple combination of the transparent component (e.g., Prizmalite™ solid glass microspheres or Cadre hollow glass microspheres) and the non-interference platelet component (e.g., alumina flakes coated with titanium dioxide).

In the July 12, 2007 Office Action, the Examiner asserted that the ‘485 Patent discloses a colored composition comprising fillers and colorants/pigments, while one of the fillers disclosed by the ‘485 Patent is glass beads, that the ‘724 Publication discloses a pigment mixture

comprising TiO₂ coated alumina (Al₂O₃) flakes and BiOCl flakes, and that it would have been obvious for a person ordinarily skilled in the art to yield the claimed invention of the present application by incorporating the pigment disclosed by the '724 Publication into the colored composition disclosed by the '485 Patent and then by adjusting the amount and particle size of the respective components (see Office Action, page 3, paragraphs 1-4).

Applicants respectfully disagree, for the following reasons:

The '485 Patent discloses a particulate filler, such as glass beads, that is coated with a polymer combined with a colorant (see the '485 Patent, column 1, lines 47-51, and column 2, line 32). In other words, the particulate filler and the colorant are **not simply combined together** in the cosmetic composition of the '485 Patent; instead, the colorant is combined with a polymer first, which are then coated over the particulate filler, thereby forming **a composite particle containing the particulate filler coated with colored polymer** (see the '485 Patent, column 1, lines 39-46, and column 2, lines 6-8). More importantly, the '485 Patent discloses that separate introduction of the filler and the colorant may have safety drawback, due to significant toxicity of certain colorants (see the '485 Patent, column 1, lines 14-29). Therefore, **the '485 Patent not only fails to teach or suggest, but expressly teaches away from a simple combination of the particulate filler with a colorant.**


Although the '724 Publication discloses the use of alumina flakes as pigments or colorants, a combination of the teachings by the '485 Patent and the '724 Publication would only motivate a person ordinarily skilled in the art to form composite particles containing glass beads that are coated with an alumina-flake-impregnated polymer, instead of a simple combination of transparent glass beads with alumina flakes, as described and claimed in the present application. In such composite particles, the glass beads would be "masked" by the alumina-flake-

impregnated polymer and would no longer be transparent, and such composite particles would not be able to achieve the desired “silvering” or variable mirror effect, as described by the instant specification of the present application and summarized hereinabove.

Therefore, the combined teachings of the ‘485 Patent and the ‘724 Publication fail to yield the claimed invention of the present application and cannot be used to establish a *prima facie* case of obviousness against the pending claims of the present application under 35 U.S.C. §103(a). Accordingly, Applicants respectfully request the Examiner to reconsider, and upon reconsideration to withdraw, the §103 rejection against the pending claims of the present application.

In view of the foregoing amendments and remark, it is firmly believed that the present application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



Yongzhi Yang (Reg. No. 56,310)
Estée Lauder Companies
155 Pinelawn Road, Ste. 345 S.
Melville, NY 11747

Telephone No.: 631-414-6089
Facsimile No.: 631-531-1340